

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6212 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JAYABEN JITENDRA KALURAM                      CHIKHALIYA

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/12/1999

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of the PASA by virtue of an order passed by the District Magistrate, Bharuch on March 5, 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the detaining authority took into consideration five offences

registered against the petitioner under Bombay Prohibition Act. The authority also took into consideration the statements of three witnesses and recorded a subjective satisfaction about the correctness of the facts stated therein, so also the genuineness of the fear expressed by the anonymous witnesses qua the petitioner in respect of person and property and decided to exercise the powers u/s 9[2] of the PASA Act of claiming privilege.

The authority also held that the petitioner is a bootlegger and her activities are detrimental to public order. It is not possible to resort to other less drastic alternative remedy in order to immediately prevent the petitioner from pursuing her illegal and anti social activities and therefore, detention under the PASA is the only remedy which can be resorted to.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India. The main ground of challenging the detention is that the order is passed after inordinate and unexplained delay.

3. Ms. Kachhawah, learned advocate appearing for the petitioner submitted that the last registered offence is dated 5th October 1998. The petitioner was arrested and bailed out on that very day. The statements of the anonymous witnesses were recorded on 14th, 15th and 16th of November 1998. These three statements came to be verified by the Dy.S.P. on 19th November 1998. Thereafter, the detaining authority verified these statements on 8th February 1999 and the order came to be passed on 5th March 1999. It is submitted by Ms. Kachhawah that, after verification by the Dy.S.P. on 19th November 1998, some action is taken in the form of verification by the detaining authority on 8th February 1999 i.e. after a lapse of about 2 months and 3 weeks. She submitted that even after the detaining authority verified the statements, the order came to be passed on 5th March 1999 i.e. nearly after 27 days. These two delays indicate that the genuineness of the need of immediately detaining the petitioner is not genuine and therefore, order of detention deserves to be quashed by allowing the petitioner.

4. Mr. H.H.Patel, learned AGP for the respondents submitted that time is consumed in decision making in the Government machinery and therefore, the delay may not be taken as so inordinate to vitiate the detention.

5. Considering the rival side contentions, the first thing that requires to be considered is that the last offence was registered on 5th October 1998. Thereafter, the statements are recorded on 14th, 15th and 16th November 1998. The same have been verified after 3 days of the last statement on 19th November 1998. This verification was made by Dy.S.P. of Bharuch. After this verification, the detaining authority has verified on 8th February 1999. This indicates lapse of 2 months and 3 weeks and even thereafter. the order is passed on 5th March 1999 i.e. after 27 days. The detaining authority has not come out with any affidavit in reply, nor has the State. It is not known therefore that why the statement is verified by the Dy.S.P. whether it was voluntarily done or at the behest of the detaining authority, is also not known. In either case, the long yawning gap of 2 months and 3 weeks between 19th November 1998 and 8th February 1999 has remained unexplained. If it was at the behest of the detaining authority, then the question why there was inaction on part of the detaining authority between 19/11/98 and 8/2/99. If it was not at the behest of the detaining authority, then also a question is why there was inaction on part of the sponsoring authority between 19/11/98 to 8/2/99. This indicates that the need for immediate action expressed by the authority is not genuine in respect of the detaining authority. This view of Court gets fortified by the fact that even after verifying the statement on 8th February 1999, the detaining authority does not take any action till 5th March 1999 i.e. for about 27 days. The detaining authority has not attempted to explain this delay and this unexplained inordinate delay between 19/11/98 to 8/2/99 and 8/2/99 to 5/3/99, would be fatal to the genuineness of the subjective satisfaction asserted by the detaining authority for the need to detain the petitioner for "immediately" preventing her from pursuing her illegal activities. The order of detention therefore gets vitiated.

6. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Bharuch on 5th of March 1999 in respect of the petitioner Jayaben Jitendra Kaluram Chikhaliya, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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